



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
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NGB-HRL

22 April 2002

MEMORANDUM FOR THE HUMAN RESOURCE OFFICERS OF ALL STATES,
PUERTO RICO, THE VIRGIN ISLANDS, GUAM AND THE DISTRICT OF COLUMBIA

SUBJECT: Military Leave for Dual-Status Technicians on Leave Without Pay - Uniform Services (LWOP-US) While Serving in Active Guard Reserve Tour (AGR) Status (HR-02-032)

1. This letter serves to clarify for all addressees, the use of military leave by an Active Guard Reserve (AGR) member who was previously employed as a National Guard technician. We acknowledge that the basis for accrual and use of military leave by a National Guard technician entering into a Title 32 or Title 10 AGR tour has been confusing. As we continue to research this issue, States, Territories and the District of Columbia are advised to cease payment of 15-days of military leave for those technicians on LWOP-US in fiscal years subsequent to entering into a Title 32 or Title 10 AGR tour. Military leave is accrued and available for use during any fiscal year when a Guard member is employed in a "paid" technician duty status. In other words, military leave is earned in the fiscal year a technician enters an AGR tour and when the technician returns from an AGR tour to a "paid" technician duty status; not during intervening fiscal years of an AGR tour.

2. As background information, because Operations Desert Shield and Desert Storm mobilized significant numbers of reservists, to include National Guard technicians who were also federal employees, the Comptroller General made Decisions regarding the accrual and use of military leave for federal civilian employees called to active duty for training or extended active duty in support of emergency, wartime, or contingency operations.

a. The first provision, 70 Comp. Gen. 263, B-241272, dated February 15, 1991, addressed accrual and charging of military leave for federal employees who are members of the National Guard serving on "active military duty" which extends into the next fiscal year. The second provision, 71 Comp. Gen. 513, B-246359, dated August 14, 1992, addressed accrual and charging of military leave for federal - employees who are members of the National Guard serving on "active military duty" spanning two or more fiscal years.

b. Both Decisions answered specific questions pertaining to federal employees serving on extended periods of "active duty" spanning more than one fiscal year. More

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importantly, they addressed military leave issues for federal civilian employees serving on extended "active duty" tours in support of military operations.


c. However, neither of these Decisions specifically included or referenced Title 32 or Title 10 AGR tours. In the past decade, the AGR program has been defined as a "[career]" program based on the member's ability to qualify for a 20-year active duty military retirement. Additionally, fiscal appropriations have never been provided to pay for military leave for technicians on AGR tours.

d. Because the Comptroller General Decisions make specific reference to "active military duty," the definition of this term becomes important. As described in Title 32 U.S.C. § 101 (12) and Title 10 U.S.C. § 101 (d)(1), the definition of "active duty" does "not include full-time National Guard duty." The definition of "full-time National Guard duty" includes "...training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States ... under section 316, 502, 503, 504, or 505 of Title 32..." .

4. Based on the factors cited above- National-Guard technicians on Title 32 or Title 10 AGR tours of duty do not fall within the definition of "active duty" prescribed above and, as such, are not entitled to 15-days of military leave while on an AGR tour. In other words, military leave is accrued and available for use during any fiscal year when a National Guard member is employed in a "paid" technician duty status; not during intervening fiscal years of an AGR tour.

5. Please note that this guidance is effective immediately. Questions or requests for additional information may be directed to COL Donna L. Hubbert, NGB-HRL, DSN 327-5980/Commercial (703) 607-5980 or Mr. David Loy, NGB-HRL, DSN 327-5981/Commercial (703) 607-5981.

FOR THE CHIEF, NATIONAL GUARD BUREAU:


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